

YOUR RIGHTS IN COUNTY LAND ACQUISITIONS (CONT'D)

- The right to just compensation for the acquisition of your property. Both the federal and Illinois constitutions require payment of just compensation for your property when it is taken by condemnation. Just compensation is the fair market value of the property taken on the date that the condemnation case is filed. If only part of your property is taken and there are damages (loss in value) to the remainder because of the acquisition, Illinois law requires that just compensation also include the amount of damages.
- Eligibility for reimbursement for moving caused by county highway projects. If you have to relocate your home or business because the Division acquires your property for a county transportation project, you may be eligible for reimbursement of reasonable and necessary moving and related expenses under the Division's relocation assistance and payments program. Additionally, if you rent or own your home, you may also be eligible for supplemental housing payments that will help you lease or buy appropriate replacement housing. These payments are not part of, but are in addition to, just compensation for the taking of the property. To be eligible, you must meet certain occupancy requirements as of the date the Division first offered to purchase the property.

DISCLAIMER

Note: This brochure is intended to give you only general information about eminent domain and county land acquisition. Any legal advice about condemnation or county acquisition of your property should be obtained from a qualified attorney of your choosing.

THE STATE'S ATTORNEY'S ROLE IN COUNTY LAND ACQUISITION

The Illinois Constitution and State law require the State's Attorney to represent county agencies in condemnation cases and other land acquisition transactions. The State's Attorney does this either through one of the Assistant State's Attorneys on staff or through a Special Assistant State's Attorney, who is a private attorney hired by the office for a particular case or other matter. Because the State's Attorney represents county agencies in condemnation and land transactions, the State's Attorney's office can neither advise nor represent you in these matters. If you would like legal advice or representation on a county purchase of your property or condemnation case, you must consult a private attorney.

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A LAND OWNER'S GUIDE TO LAND ACQUISITION BY THE MCHENRY COUNTY DIVISION OF TRANSPORTATION AND EMINENT DOMAIN



WHY THE COUNTY ACQUIRES LAND

The County of McHenry needs land in order to fulfill its basic responsibilities to its citizens. These include building new roads and improving existing ones and erecting and expanding public buildings. If it could not acquire private property, the County would be unable to fulfill these fundamental responsibilities.

County Land Acquisition Methods

The County acquires private property either by purchasing it from the owner or through its power of “eminent domain” in a court proceeding called “condemnation.”

Purchasing property.

If the McHenry County Division of Transportation (the Division) needs your property, it will first approach you with an offer to purchase it, just as a private individual or corporation would. The amount of that offer will be what the Division believes your property would bring if it were put up for sale (this amount is called “the fair market value”). The Division will obtain an appraisal or waiver valuation depending upon the complexity of the assignment to determine the fair market value. If the Division wishes to purchase only part of your property, the amount it offers will include compensation for any damages (that is the loss in value of your remaining property) that will be caused by the acquisition.

While the Division’s offer is based on its determination of fair market value, the Division’s offer to purchase is not inflexible. It may consider a validly supported counter-offer from you and may make a revised offer in response. County purchases of property are concluded, just as in private sales, with the property owner giving the Division the proper deed and other documentation to transfer good title.

Acquisition through eminent domain.

Eminent domain is the County’s authority to take private property for public purposes, like those mentioned earlier, upon payment of just compensation to the owner. It is based on the principle that no private interest is more important than the County’s need to provide for the general public good. While eminent domain is inherently a power of only the federal and state governments, the State of Illinois has given this power to other units of government, such as counties, cities and villages, and, in certain cases, to railroads and utilities. The court proceeding used to acquire property under the power of eminent domain is called “condemnation.”

If you reject or don’t respond to the Division’s first offer, or if after counter-offering, you and the Division still can’t agree on a price or other conditions for the sale of the property, the Division may decide to acquire your property under the County’s power of eminent domain. Even in cases in which you and the Division have agreed on a sale price, the Division may still have to resort to acquisition by eminent domain if there is a reason you can’t give the Division clear title to your property (e.g., if there are liens against it, or if a co-owner won’t agree to the sale or can’t be located).

Payment of compensation.

When McHenry County has filed a condemnation case, it cannot by law make the preliminary and final just compensation payments directly to you, but must deposit them with the County Treasurer. This is so that there will be an opportunity to pay off any claims (judgments, delinquent taxes, etc.) that are recorded against your property.

To receive compensation payments after deposit, you usually will be required to present a petition (a written request) to the judge asking to have them released to you. *It is your responsibility to present this petition*, either yourself or through your attorney, since the State’s Attorney only represents the Division in condemnation cases. Ordinarily, the judge will direct the County Treasurer to make payment to you unless a judgment creditor, tax collector, or other claimant appears and shows that he or she is entitled to all or part of the payments.

YOUR RIGHTS IN COUNTY LAND ACQUISITIONS

When acquiring your property, the Division must observe your rights under the federal and Illinois constitutions and those given you as a property owner by Illinois law. Some of the more important of these rights are:

- The right to be presented with a purchase offer for your property before a condemnation case is filed. In Illinois, county agencies and other entities that have eminent domain power must attempt to purchase your property before they file a condemnation case, unless attempting to do so would be clearly fruitless.
- For County acquisitions, the right to be provided with certain information about the acquisition before a condemnation case is filed. When the Division first contacts you about acquiring your property, it must identify itself and the purpose of the acquisition, including any facility that will be constructed on the property. Also, the Division must give you a description of the property it wishes to acquire and provide you with the name, address and telephone number of the Division’s representative to answer questions about the acquisition.
- The right to be represented by an attorney of your choosing and to have a jury trial. Both prior to and during a condemnation case, you have the right to be represented by an attorney of your own choosing. However, the County is not obligated to reimburse you for attorney’s fees and other litigation expenses. You also have a right to have a jury decide the amount of final just compensation.

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